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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 RICHARD JOHNSON,

12 Plaintiff,

13 v.

14 DAN CARLINO HOLDINGS, LLC, a
15 California Limited Liability Company and
16 DOES 1-10, inclusive,

17 Defendants.

CASE NO.: 5:21-cv-01428

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR DENIAL OF
CIVIL RIGHTS AND ACCESS TO
PUBLIC FACILITIES IN VIOLATION OF
TITLE III OF THE AMERICANS WITH
DISABILITIES ACT; VIOLATION OF
CALIFORNIA CIVIL CODE §§ 51,52;
AND RELATED CODES AND
REGULATIONS

DEMAND FOR JURY

18 Plaintiff, Richard Johnson, alleges as follows:

19 **I. PARTIES**

20
21 1. This is a civil rights action by Plaintiff, Richard Johnson ("Plaintiff") for
22 disability discrimination by Defendants, Dan Carlino Holdings, LLC, a California Limited
23 Liability Company and Does 1-10, inclusive (collectively hereinafter "Defendants").

24 2. Plaintiff is a Santa Clara County resident with physical disabilities. Plaintiff
25 suffers from the medical condition C-7-T-1 Tetraplegia and uses a manual wheelchair
and van equipped with a lift when traveling about in public. As such, Plaintiff's physical

1 impairments substantially limit and/or affect one or more major life activities such as
2 walking. At all relevant times, Plaintiff is and was a “person with a disability” and a
3 “physically handicapped person” within the meaning of the Americans with Disabilities
4 Act and California Government Code section 12926 and is a person whose rights are
5 protected by these laws.

6 3. Plaintiff is informed and believes and thereon alleges that at all times
7 herein mentioned, Defendants were and currently are the owners, operators, lessees
8 and/or lessors of the 76 Fastlane gas station and real property and located at 1099
9 Blossom Hill Rd., San Jose, CA 95123 (“the Facility”).

10 4. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their relative
12 responsibilities in causing the access violations herein complained of and alleges a joint
13 venture and common enterprise by all such Defendants. Plaintiff is informed and
14 believes that each of the Defendants herein, including DOES 1 through 10, inclusive, is
15 responsible in some capacity for the events herein alleged, or is a necessary party for
16 obtaining appropriate relief. Plaintiff will seek leave to amend this Complaint when their
17 true names and capacities are ascertained.

18 5. Plaintiff is informed and believes that each of the Defendants is and was
19 the agent, employee or representative of each of the other Defendants and performed
20 all acts and omissions stated herein within the scope of such agency or employment or
21 representative capacity and is responsible in some form or manner for the acts and
22 omissions of the other Defendants thereby proximately causing the damages
23 complained of herein.

24 6. At all relevant times, all Defendants and each of them were legally
25 responsible to Plaintiff for each of their co-defendants’ wrongs, acts, and omissions

1 alleged herein as though they had each committed each act themselves, and at all times
2 authorized, directed, and ratified the acts and omissions of each remaining defendant.

3 **II. JURISDICTION AND VENUE**

4 7. This Court has subject matter jurisdiction of this action pursuant to 28
5 U.S.C. §§ 1331 and 1343 for violations of the Americans with Disabilities Act (“ADA”) of
6 1990, 42 U.S.C. § 12101, et seq.

7 8. Pursuant to supplemental jurisdiction, an attendant and related cause of
8 action arising from the same nucleus of operative facts and arising out of the same
9 transactions is also brought under California’s Unruh Civil Rights Act, which act
10 expressly incorporates the Americans with Disabilities Act.

11 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is based
12 on the fact that the Facility (*i.e.*, the real property) which is the subject of this action is
13 located in the Northern District of California and that Plaintiffs’ cause of action arose in
14 the Northern District of California.

15 **III. SUMMARY OF FACTS**

16 10. Plaintiff lives in Santa Clara County and has patronized the Facility located
17 at 1099 Blossom Hill Rd., San Jose, CA 95123 several times during the statutory period
18 (*i.e.*, two years) including at least three (3) documented visits on or about August 19,
19 2019, December 17, 2020, and February 4, 2021. During his visits to the Facility Plaintiff
20 encountered some or all of the following barriers to access:

- 21 • There is no compliant van accessible disabled parking at the Facility;
 - 22 ○ There appear to be two designated disabled parking spaces at the
 - 23 Facility, however, neither are accessible:
 - 24 ▪ For example, the designated disabled parking space on the
 - 25 left has faded/missing pavement markings and posted

1 signage. This parking space also requires the disabled to
2 travel behind parked vehicles (other than their own) to reach
3 the ramp and/or front entrance;

- 4 ▪ The designated disabled parking space on the right is not
5 usable by the disabled because the adjacent access aisle is
6 typically occupied by illegally parked vehicles;

- 7 • Plaintiff has a van with a lift that deploys from the
8 passenger side. Without a compliant van accessible
9 parking space and adjacent access aisle it becomes
10 difficult, if not impossible, for Plaintiff to deploy his
11 ramp and/or risk being blocked in by another vehicle if
12 he is forced to double park.

- 13 • There is no tow away warning signage posted at each vehicular entrance
14 or where visible from the designated accessible parking areas;
- 15 • There is no accessible route of travel from accessible parking areas and/or
16 the public right of way/sidewalk to entrance of Facility;
- 17 • The path of travel from the gas pump to the front entrance has cross
18 slopes that exceed 2.08%;

- 19 ○ Without marked and accessible paths of travel from the pump,
20 accessible parking areas, and the public right of way it becomes
21 more difficult for Plaintiff to safely move about the Facility without
22 risk of being struck by vehicular traffic that might otherwise not see
23 him in his wheelchair.

- 24 • The entrance door closes too fast and is too heavy because requires more
25 than 5lbs of force to operate;

- 1 • The front door mat is a tripping hazard because it is not trimmed or
- 2 secured;
- 3 • The interior path of travel is too narrow;
- 4 • There is no compliant accessible restroom at the Facility;
- 5 ○ Restroom door closes too fast and is too heavy because requires
- 6 more than 5lbs of force to operate;
- 7 ○ Restroom door signage is missing and/or improper;
- 8 ○ The pipes beneath the sink are not properly wrapped or covered to
- 9 insulate against contact;
- 10 ○ There is insufficient clear floor space at the toilet (because of a
- 11 garbage can);
- 12 ○ The flush valve is not located on the wide side of the toilet;
- 13 ○ The toilet seat cover dispenser is mounted too high;
- 14 ○ Paper towel dispenser is mounted too high;

15 11. These barriers at the Facility prevented Plaintiff from being able to use the
16 Facility in the same manner as an able-bodied person. As a result, these barriers at the
17 Facility and the lack of accessibility caused Plaintiff to feel like a second-class citizen. In
18 particular, Plaintiff likes to visit the Facility because it is convenient and offers goods and
19 services that he regularly needs including food and drink (convenience store), fuel,
20 and/or smog check services. Unfortunately, on each of Plaintiff's visits to the Facility he
21 was embarrassed and frustrated by the difficulties he encountered there.

22 12. Plaintiff believes there may be additional barriers to his access at the
23 Facility that relate to his disability. Plaintiff intends to amend his complaint, if necessary,
24 to provide notice of any additional violations identified during a properly noticed site
25 inspection by his Certified Access Specialist (CAsp). Accordingly, Plaintiff anticipates

1 seeking injunctive relief for all barriers to access which relate to his disability and are
2 identified during such an inspection. *See Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008).

3 13. Plaintiff lives approximately 5.5 miles from the Facility and intends to
4 continue to visit the Facility to avail himself of the goods and/or services offered there,
5 but will continue to be discriminated against until the barriers to his access are removed.
6 Of course, Plaintiff would prefer if Defendants would remove the barriers to access so
7 that he and other disabled patrons may enjoy full and equal access to the Facility.

8 14. Until the discriminatory policies, practices, and procedures of Defendants
9 are modified and changed, Plaintiff will continue to be denied full and equal access to
10 the goods and services offered by Defendants to the general public because he will
11 suffer ongoing discrimination and damages by being excluded and deterred from the
12 Facility.

13 15. Plaintiff is informed, believes, and based thereon alleges that his individual
14 experiences of disability discrimination by Defendants are representative of Defendants'
15 overall failure to maintain adequate accessible facilities and/or adequate training of
16 employees as to the rights of customers with disabilities.

17 16. The discriminatory treatment of Plaintiff by Defendants constitutes an
18 ongoing violation of both federal and state laws, and unless enjoined by this Court, will
19 result in an ongoing and irreparable injury to Plaintiff and other similarly situated
20 persons.

21
22 **IV. FIRST CLAIM**
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990
23 **42 U.S.C. §12101 et seq.**

24 17. Plaintiff realleges and incorporates by reference each and every allegation
25 contained in Paragraphs 1 through 15, inclusive, as though fully set forth herein.

1 18. Congress enacted the Americans with Disabilities Act (hereinafter “ADA”)
2 upon finding, among other things, that “society has tended to isolate and segregate
3 individuals with disabilities” and that such forms of discrimination continue to be “serious
4 and pervasive social problems.” 42 U.S.C. § 12101(a)(2).

5 19. In response to these findings, Congress explicitly stated that the purpose
6 of the ADA is to provide “a clear and comprehensive national mandate for the
7 elimination of discrimination against individuals with disabilities” and “clear, strong,
8 consistent, enforceable standards addressing discrimination against individuals with
9 disabilities.” 42 U.S.C. § 12101(b)(1)-(2).

10 20. Title III of the ADA provides in pertinent part: “No individual shall be
11 discriminated against on the basis of disability in the full and equal enjoyment of the
12 goods, services, facilities, privileges, advantages, or accommodations of any place of
13 public accommodation by any person who owns . . . or operates a place of public
14 accommodation.” 42 U.S.C. § 12182(a).

15 21. The ADA further provides that “it shall be discriminatory to afford an
16 individual or class of individuals, on the basis of disability or disabilities of such
17 individual class, directly, or through contractual, licensing, or other arrangement with the
18 opportunity to participate in or benefit from a good, service, facility, privilege, advantage,
19 or accommodation that is not equal to that afforded to other individuals.” 42 U.S.C. §
20 12182(b)(1)(A)(ii).

21 22. Discrimination under the ADA includes “a failure to take such steps as may
22 be necessary to ensure that no individual with a disability is excluded, denied services,
23 segregated or otherwise treated differently than other individuals because of the
24 absence of auxiliary aids and services” 42 U.S.C. § 12182(b)(1)(A)(iii).

25 23. The ADA further prohibits “a failure to make reasonable modification in

1 policies, practices, or procedures, when such modifications are necessary to afford such
2 goods, services, facilities, privileges, advantages, or accommodations to individuals with
3 disabilities . . .” 42 U.S.C. § 12182(b)(1)(A)(ii).

4 24. By virtue of their acts and omissions herein alleged, Defendants have
5 violated Title III of the ADA as to Plaintiff.

6 25. Pursuant to 42 U.S.C. § 12188(a), Plaintiff is entitled to declaratory and
7 injunctive relief, and to recover reasonable attorneys’ fees and litigation costs and
8 expenses incurred in bringing this action.

9 **V. SECOND CLAIM**
10 **VIOLATION OF UNRUH CIVIL RIGHTS ACT**
11 **CALIFORNIA CIVIL CODE § 51 et seq.**

12 26. Plaintiff realleges and incorporates by reference each and every allegation
13 contained in Paragraphs 1 through 24, inclusive, as though fully set forth herein.

14 27. At all times herein mentioned, the Unruh Civil Rights Act, California Civil
15 Code §51(b), provided that:

16 All persons within the jurisdiction of this state are free and
17 equal, and no matter what their sex, race, color, religion,
18 ancestry, national origin, disability, or medical condition are
19 entitled to the full and equal accommodations, advantages,
20 facilities, privileges, or services in all business
21 establishments of every kind whatsoever.

22 Pursuant to §51(f),

23 A violation of the right of any individual under the Americans
24 with Disabilities Act of 1990 (Public Law 101-336) shall also
25 constitute a violation of this section.

26 28. Plaintiff is a person with a disability within the meaning of the Unruh Act.

27 29. Defendants’ business location (*i.e.*, the Facility) is a business
28 establishment within the meaning of the Unruh Act.

29 30. Plaintiff suffered damages as above described as a result of Defendants’

1 violation of California Civil Code §§ 51(b) and 51(f) in multiple regards including, but not
2 limited to, denying Plaintiff the opportunity for full and equal access and enjoyment to
3 the Facility and the goods and services provided therein, in violation of both California
4 law and the ADA, as described in the Summary of Facts, *supra*, the contents of which
5 are incorporated herein.

6 31. California Civil Code §52(a) provides that each such violation entitles
7 Plaintiff to “the actual damages, and any amount that may be determined by a jury, or a
8 court sitting without a jury, up to a maximum of three times the amount of actual damage
9 but in no case less than four thousand dollars (\$4,000.00), and any attorney’s fees that
10 may be determined by the court in addition thereto. . . .”

11 32. On the subject occasions (*i.e.*, on or about August 19, 2021, December
12 17, 2020 and February 4, 2021) when Plaintiff attempted to obtain the goods and
13 services offered by Defendants, he was not allowed full and equal enjoyment and
14 access due to the refusal by Defendants to provide accommodation to and around the
15 Facility. As a result, Plaintiff suffered unnecessary anxiety and panic, causing him to
16 feel humiliated, embarrassed, frustrated, and angry that he could not obtain full and
17 equal access to the services offered at the Facility simply because he was disabled.

18 33. Plaintiff was damaged by Defendants’ wrongful conduct and seeks
19 statutory minimum damages of four thousand dollars (\$4,000.00) for each event of
20 discrimination and for each time Plaintiff has been deterred from returning to the
21 business together with attorney’s fees and litigation costs and expenses.

22 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

23 1. That the Court issue a preliminary and permanent injunction directing
24 Defendants as the owners and/or operators of the Facility located at 1099 Blossom Hill
25 Rd., San Jose, CA 95123 to remove the aforementioned barriers to Plaintiff’s full and

1 equal access and establish policies and procedures so that they provide full and equal
2 access to all persons, including persons with physical disabilities as required by law.

3 2. That the Court retain jurisdiction over the Defendants until such time as
4 the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions
5 complained of herein no longer occur, and cannot reoccur;

6 3. That Plaintiff be awarded all appropriate damages, including but not limited
7 to statutory damages, general damages, special damages, punitive/exemplary damages
8 and treble damages in an amount within the jurisdiction of the Court, all according to
9 proof;

10 4. That Plaintiff be awarded all of his reasonable statutory attorney's fees,
11 litigation expenses, and costs of this proceeding as provided by law;

12 5. That Plaintiff be awarded prejudgment interest pursuant to Civil Code
13 §3291; and

14 6. Such other and further relief as the Court deems just and proper.

15 Dated: February 26, 2021

ACCESSIBLE CALIFORNIA, APC

16 By: /s/ Khushpreet R. Mehton /
17 KHUSHPREET R. MEHTON, ESQ.
18 Attorney for Plaintiff Richard Johnson

19
20 **DEMAND FOR JURY**

21 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

22 Dated: February 26, 2021

ACCESSIBLE CALIFORNIA, APC

23 By: /s/ Khushpreet R. Mehton /
24 KHUSHPREET R. MEHTON, ESQ.
25 Attorney for Plaintiff Richard Johnson